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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,334	01/04/2002	Michael Wiedeman	011715	2251

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EXAMINER	
BARFIELD, ANTHONY DERRELL	
ART UNIT	**PAPER NUMBER**
3636	

DATE MAILED: 09/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/035,334	WIEDEMAN ET AL.	
	Examiner	Art Unit	
	Anthony D. Barfield	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 June 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *14-24* is/are allowed.

6)☒ Claim(s) *1,6-8,10,12,25 and 28* is/are rejected.

7)☒ Claim(s) *2-5,9,11,13,26,27,29 and 30* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims l, 6-8,10, 12, 25 and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Lohr et al. Lohr et al. shows the use of a central pillar (11), a center support (7) extending forwardly therefrom, a lower rib (5) and an intermediate rib (5) extend laterally from the central pillar in order to respectively support a seat bottom (8) and back (9) thereon. Lohr et al. shows the use of a grab handle (25) on an outer edge of the seat back. There is an opening (formed by the frame (3,4) and ribs) in the seat back and seat bottom prior to the cushion being applied (see Fig, 4).

Allowable Subject Matter

3. Claims 2-5,9,11,13, 26-27 and 29-30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. Claims 14-24 are allowed over the prior art made of record.

Response to Arguments

5. Applicant's arguments filed 6/30/05 have been fully considered but they are not persuasive. In response to applicant's argument that the claims are drawn to a seat in the "environment" of a vehicle having a floor and roof , examiner maintains the position that the seat as taught by Lohr et al., is "adapted" for a vehicle having a roof and floor. Applicant is reminded that just because the environment" is recited in a claimed invention does not imply the "environment" is part of the invention unless **positively** stated and not **functionally**' stated, which is considered to be intended use recitation. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See In re Casey, 370 F.2d 576, l 52 USPQ 235 (CCPA 1967) and fn re Otto, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963). Consequently, the examiner is of the opinion that the seat of Lohr et al., could be used in a vehicle. In response to applicant's arguments that Lohr does not disclose a "central pillar" the examiner maintains the opinion that in regards to the intended use

of applicant's invention, the central pillar (11) as taught by Lohr could in fact be disposed in a central area of the vehicle and .have another seating area disposed on the opposing side of the pillar, which is common and inherent in many mass transit vehicles. Applicant is reminded that there does not have to be stated disclosure by Lohr of a central pillar but what would tone of ordinary skill in the art" gleam from the disclosure of Lohr who shows a pillar with a lateral rib, which is in accordance so far as defined by the claimed invention. Furthermore, it is irrelevant whether the central pillar of Lohr is actually shown to fixed to a roof and a floor as the applicant has disclosed that the claims are drawn to **the subcombination of the seat only** and the **not the combination of the seat and vehicle.**

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony D. Barfield whose telephone number is 571-272-6852. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony D Barfield
Primary Examiner
Art Unit 3636

adb
September 11, 2005